EXHIBIT 9
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HB 518

HB 518, mental health advance directives

The problem this bill addresses:
Mental illnesses are cyclical. Some people experience years and some only months between episodes of psychosis, mania or suicidality. In a full-blown crisis, the state can often intervene; judges commit people who are a danger to themselves or others. But crises are typically preceded by a period of decompensation and incapacity when everyone but the person with the illness can see what is happening, yet there is no legal way to break through the denial and get treatment. HB 518 creates a legal mechanism for the consumer to consent–in advance–to care during these periods of incapacity.

Who can create a directive:
Adults and children who are at least 16, because they have a statutory right to consent to mental health services (see §53-21-112, MCA).

What triggers a directive:
A supervising healthcare provider's determination of "incapacity."

A supervising healthcare provider is not necessarily a doctor.
In smaller communities, this can be an advance practice nurse or a mental health professional. Also, as the situation changes, the supervising provider may change, too.

The principal can include a personal definition of "incapacity" in the directive.
A person may able to do advanced math but have temporarily lost the ability to understand the significant benefits of getting treatment for mental illness. HB 518 requires the supervising healthcare provider to take into consideration the principal's description of "incapacity" in making the determination.

Kinds of care a directive can consent to:
Anything connected to mental health treatment, including medications for other medical conditions that can have an effect on the mental illness. Metabolic disorders, kidney, liver and heart disease are side-effects of the medications that are used to treat mental illness. Most people with mental illness are also being treated for other health conditions.

Why a directive can provide consent to hospitalization:
Consumers asked for this. St. Pat's, the Billings Clinic and Kalispell Regional believe this could be a useful tool. Brief hospitals stays are often sufficient to resolve a crisis so that a person can return to a lower level of care in the community

A bad mental health directive is like having no mental health directive: the patient is neither in a worse nor a better position as a result.
The only reason to create the directive authorized by HB 518 is to provide consent to treatment that is medically appropriate under the prevailing standard of care. Patients don't need directives to refuse care–they've always had that right. They need directives so they can consent to care.

Why it's a good idea to have a mental health directive that's legally sufficient on its own.
Mental illness complicates relationships. It may be difficult to trust anyone or there may not be any responsible adults left in a person's life. Requiring that everyone designate an agent will discourage creation of directives.

What the proposed advance directive law does not change:

The right of a provider to refuse treatment
The right of a patient to receive treatment
The medical standard of care
Hospital admission policies
Insurance policies, Medicaid or Medicare policies

A directive also does not:

Apply at the State Hospital, prison or jail.
Change civil commitment, guardianship or criminal law.
Limit court authority in any way.

A directive can be challenged:
HB 518 gives judges the authority to review advance directives.

Why a directive, including an agent, may survive a guardianship order:
A judge in a guardianship proceeding must be given a copy of the directive and has the power to revoke or amend the directive by order. But if, for some reason, there is both a guardian and a directive, then HB 518 says the mental health care provider should follow the directive. The reason: The directive was created when the person had the capacity to exercise a constitutionally protected right to make healthcare decisions. Also, guardianships are usually broad, general and long duration, while mental health advance directives are limited in scope, specific to a particular medical situation, and their application is limited in duration.

Why the principal can choose whether to make the directive revocable or irrevocable.
The Montana living will and durable power of attorney are both revocable at any time, even after a patient has lost capacity. The workgroup that debated this issue at DRM last spring unanimously recommended allowing the principal to choose whether to make the mental health directive irrevocable. The group hoped that this would encourage more people to create directives and learn how they work.

Why this bill is good public policy:
One of the highlights of the 2009 legislature was passage of the three "mental health crisis bills" that promote the development of prompt, intensive, local mental health interventions. Like the crisis bills, HB 518 promotes prompt, cost-effective, community care and prevent expensive legal proceedings and commitment to the State Hospital.

Montana is moving towards a "recovery" model of mental health care, which emphasizes the self-determination of people with live with mental illness but also requires that patients take responsibility for managing those illnesses. Advance directives are a potentially valuable tool for achieving recovery.

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